

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

REMARKS

Claims 1-24 and 26 are pending in the present application. Applicant notes with appreciation the Examiner's withdrawal of the previous claim objections under 35 U.S.C. § 112.

Nature of The Present Invention

The present invention is aimed at the need to measure and improve the *effectiveness* of advertisers' ads in the context of the programs in which they are aired and to obtain accurate, continuous data on the *performance* of ads. Independent claim 1 is directed to a method of increasing the effectiveness of advertising using first and second sets of questions relating to advertising content and show content, respectively. Independent claim 12 is directed to a method of using a user's demographic profile to conduct a trivia contest using such first and second sets of questions. Independent claim 14 is directed to a method of determining advertising performance using such first and second sets of questions. Independent claim 15 is directed to a method of determining the effectiveness of product placement based upon members' answers to first and second subsets of questions. Independent claim 16 is directed to a method of creating a report indicative of the effectiveness of advertising content using such first and second sets of questions. Independent claim 20 is directed to a method of increasing the effectiveness of advertising content, determining advertising content performance, and determining show content performance, using such first and second sets of questions. Independent claim 21 is directed to a method of creating a report indicative of recall, understanding, likeability or other broadcast performance measure, using such first and second sets of questions.

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

The Claimed Invention Is Patentable Over Von Kohorn

Claims 1-5, 8, 10-15 and 26 stand are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,759,101 to Von Kohorn (hereinafter "Von Kohorn").

Applicants respectfully traverse the rejections in their entirety.

The System Disclosed by Von Kohorn

Von Kohorn discloses a system which allows external participants to participate in a broadcast, e.g., a game show or a sporting event such as a football game. See, e.g., col. 3, lines 36-44; col. 23, lines 8-55. Questions are presented in the broadcasted show by the show's host or sportscaster, or are projected onto an on-stage screen which is in view of the television camera. Remote audience members and/or live audience members enter their responses to the questions into a response unit, and a score counter provides a score at the conclusion of responses to a question. See, e.g., col. 4, lines 8-19. Successful contestants may receive prizes, coupons, or other rewards. See, e.g., col. 16, lines 39-44.

No Teaching of Storing First and Second Sets of Questions in Computer

Von Kohorn does not teach or suggest storing any questions in a computer, much less first and second sets of questions relating to show content and advertising content, respectively. In the Response to Arguments portion of the Office Action, the Examiner cites Von Kohorn at col. 39, lines 14-47 as teaching that "the program memory 108 stores the possible responses and the questions." This is absolutely incorrect. Von Kohorn does not teach or suggest in any manner the storage of the questions in his program memory 108 (or his program memory 330). The cited portion of Von Kohorn is reproduced below:

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

In operation, the program memory 330 and the control logic unit 350 operate together in a manner similar to that of the program memory 108 and the control logic unit 118 of FIG. 4. The program memory 330 stores information as to the number of possible responses, the number of questions, and also stores instructions for commanding the dispenser to print out messages in accordance with scores based on responses to questions and other tasks set forth in the studio 204. The memory 332 stores possible answers to questions and tasks, such as colors of objects displayed in the studio 204, sizes of such objects, sentences or phrases describing events in history, science, music, art or literature, listings, names and similar information which may be transmitted via the response criteria signal to the remote stations. The timing unit 336 includes counters and memories as will be described with reference to FIG. 9 for outputting appropriate factors or coefficients for use in scoring responses based on time of response. The memory 334 stores designated time intervals which are to be inputted as preset signals to the counters of the timing unit 336, and also stores factors to be applied in the scoring or grading of responses based on level of difficulty. Such level of difficulty information is transmitted from the central station via the scoring mode signal to the remote stations. After presentation of a task in the studio 204, the host 212 indicates the beginning of a time interval for audience response by pressing a key on the keyboard 226, this resulting in the transmission of a start signal to the response unit 210. The decoder 342 decodes the start signal and applies the start signal via the OR circuit 354 to initiate timing in the timing unit 336, the

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

start signal proceeding through the timing unit 336 to the control logic unit 350 to initiate operation of the logic unit 350. Operation of the three memories 330, 332, and 334 is under control of the logic unit 350.

Nowhere in the above does Von Kohorn teach or suggest storage of his questions in a computer system, much less storage therein of first and second sets of questions relating to show content and advertising content, respectively. Indeed, Von Kohorn would have no reason to store the questions in his program memory 108 because program memory 108 is part of the response equipment; it stores a program that controls a score counter to tally correct responses in accordance with a response signal from a comparator. See, e.g., col. 20, lines 8-27; col. 3, lines 21-35. The program memory 108 has nothing to do with the questions themselves, and does not store them. While Von Kohorn teaches the use of on-stage display screens or message boards for displaying questions to the external or internal audience, these are not computer systems.

At paragraph 3 of the present Office Action, the Examiner continues to cite column 44, line 55, to column 45, line 5, of Von Kohorn as disclosing storage in a computer system of the first set of questions, and cites column 2, lines 42-59, of Von Kohorn as disclosing storage in a computer system of the second set of questions. While Von Kohorn discloses storage of data entered by a respondent, i.e., a response, in a computer system, he fails to teach or fairly suggest the storage in a computer system of the claimed two sets of questions. Applicants see nothing in the cited portions, or elsewhere in Von Kohorn, that teaches or fairly suggests storage in a computer system of Applicants' claimed first and second sets of questions. In this respect, Von Kohorn states at column 44, lines 55-67, that his questions are either asked by a host or visually posed to the television viewers by displaying the questions on electronic boards

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

or on other display means. Von Kohorn goes on to state that, alternatively the host may silently point to an advertised item of merchandise to insure that participants are paying attention. In each case, the disclosure of Von Kohorn fails to teach or fairly suggest storage in a computer system of first and second sets of trivia questions relating to advertising content and show content, respectively.

Von Kohorn Does Not Teach Or Suggest Selecting Subsets

In addition to the above-recites failure of Von Kohorn to disclose storage of first and second sets of questions, Von Kohorn further fails to teach or suggest the selection of subsets of each of those sets to ask a member. In this respect, Applicant's claim 1 recites the following:

...selecting a subset of said first set of trivia questions and a subset of said second set of trivia questions to ask a member...

Independent claims 12, 14 and 15 include similar limitations.

Von Kohorn fails to teach or fairly suggest selecting a subset of the first and second sets of trivia questions to ask a member. While the Examiner cites FIG. 28 as disclosing Applicant's claimed "selecting a subset..." element, Applicant disagrees. FIG. 28 relates to selection of a shopper's area of interest, and fails to teach or fairly suggest selecting a subset of first trivia questions related to show content and a subset of second trivia questions relating to advertising content to ask a member. To the contrary, in accordance with the description of FIG. 28 at column 88, lines 58-59, "program material including questions and product listings are televised," which would require that viewers receive all questions. At column 44, lines 55-

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

67, he states further that questions are either asked by a television host or visually posed to the television viewers, which would also require that such television viewers receive all questions. This is inconsistent with Applicant's claimed step of selecting a subset of the first and second sets of trivia questions to ask a member.

Non-Obviousness Over Von Kohorn

Claims 6-7, 9, and 16-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Von Korn. This rejection is respectfully traversed in its entirety.

The above arguments that Von Kohorn fails to teach or suggest limitations set forth in Applicants' independent claims are incorporated herein in response to the § 103 rejection and will not be repeated here. Additionally, patentable features of claims 6-7, 9 and 16-24 are set forth below.

Claim 6 requires that the broadcast comprises a display of multimedia content via an internet connection and claim 7 requires that members' responses to subsets of trivia questions be received via an internet connection. Contrary to the Examiner's assertion at paragraph 7 of the Office Action, Applicants are not arguing that internet connections were not well known in the prior art. However, Applicants do take issue with the assertion that Von Kohorn's disclosure at column 7, lines 11-34 suggests these elements. Von Kohorn discloses therein a "network of broadcast stations", not a network connection comprising an internet connection as claimed. Replacing a "network of broadcast stations" with an internet connection was not well known in the art at the time of the invention or more than one year prior to Applicants' filing date. Further, with respect to claim 7, Von Kohorn's disclosed "network of broadcast stations" fails to teach or suggest using an internet connection to receive members' responses.

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

Regarding claims 16-19 and 20-24, the Examiner admits that Von Kohorn fails to teach Applicants' claimed steps of scoring member's performance in response to the subset of trivia questions and creating a report indicative of effectiveness of advertising content based at least in part on said member's responses. While the Examiner cites column 44, line 55, to column 45, line 5, and column 135, lines 5-27, of Von Kohorn, in combination with official notice, as suggesting these elements, Applicants strongly disagree. Nothing in the cited portions or elsewhere in Von Kohorn discloses measuring the effectiveness of advertising based upon members' responses to first and second sets of trivia questions. Von Kohorn fails to teach or suggest scoring members responses as an indication of the effectiveness of advertising or creating a report, based upon the responses, indicative of that effectiveness. Thus, Von Kohorn, even when combined with the official notice taken by the Examiner, does not teach or suggest the invention of claims 16-19 and 20-24. Further, as discussed in detail above with respect to the § 102 rejections, Von Kohorn fails to teach or suggest storing in a computer system first and second sets of trivia questions relating to advertising content and show content, respectively, as required by independent claims 16 and 20.

Conclusion as to Patentability Over Von Kohorn

In view of all of the above, Von Kohorn clearly fails to teach or suggest specific elements set forth in claims 1-5, 8, 10-15 and 26, and therefore fails to anticipate these claims. The Court of Appeals for the Federal Circuit has consistently held that "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984). Von Kohorn clearly fails to teach or suggest structure positively recited and claimed in Applicants' independent claims. Thus, Applicants'

Serial No. 09/917,792
Atty. Docket No. 50442.010200
Response to Office Action

invention is patentable over Von Kohorn, and the anticipation rejection under § 102 should be withdrawn.

With respect to the obviousness rejection, it has been shown above that claims 6-7, 9, and 16-24 include limitations not taught or suggested by Von Kohorn. It is well established that, in order to show obviousness, all limitations must be taught or suggested by the prior art. In Re Boyka, 180 U.S.P.Q. 580, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. It is error to ignore specific limitations distinguishing over the references. In Re Boe, 184 U.S.P.Q. 38, 505 F.2d 1297 (CCPA 1974); In Re Saether, 181 U.S.P.Q. 36, 492 F.2d 849 (CCPA 1974); In Re Glass, 176 U.S.P.Q. 489, 472 F.2d 1388 (CCPA 1973). It is therefore requested that the § 103 rejection of claims 6-7, 9, and 16-24 over Von Kohorn be withdrawn.

Having responded to all objections and rejections, it is submitted that pending claims 1-24 and 26 are allowable and the application is in condition for allowance. Notice to that effect is respectfully solicited.

In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of the application, he is courteously requested to contact Applicant's undersigned representative.

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Respectfully submitted,

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